

Peter R. Afrasiabi (Bar No. 193336)
pafrasiabi@onellp.com
Nathaniel L. Dilger (Bar No. 196203)
ndilger@onellp.com
ONE LLP
4000 MacArthur Blvd.
East Tower, Suite 500
Newport Beach, CA 92660
Telephone: (949) 502-2870
Facsimile: (949) 258-5081

Joanna Ardalan (Bar No. 285384)
jardalan@onellp.com
ONE LLP
9301 Wilshire Blvd.
Penthouse Suite
Beverly Hills, CA 90210
Telephone: (310) 437-8665
Facsimile: (310) 943-2085

Attorneys for Plaintiff,
Targus Group International, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

TARGUS GROUP INTERNATIONAL,
INC., a Delaware corporation,

Plaintiff,

v.

UNITED STATES LUGGAGE
COMPANY d/b/a SOLO, a New York
limited liability company,

Defendant.

AND RELATED COUNTERCLAIM

Case No. SACV15-01232-JVS-JCG
Hon. James V. Selna

JOINT RULE 26(f) REPORT

Continued Scheduling Conference

Date: December 7, 2015

Time: 11:30 a.m.

Crtrm: 10C

1 Plaintiff Targus Group International (“Targus” or “Plaintiff”), and Defendant United
 2 States Luggage Company LLC d/b/a Solo (“Solo” or “Defendant”) hereby submit their
 3 Joint Rule 26(f) Report. The Report includes all information required by Fed. R. Civ. P. 26
 4 and L.R. 26-1 and notes the parties’ disagreements on issues where applicable.

5 **A. SYNOPSIS**

6 **Targus’s Position:**

7 This is a patent enforcement and infringement action by Plaintiff, the exclusive
 8 owner of U.S. Patent No. 8,746,449 (the “449 Patent”) and 8,783,458 (the “458 patent”)
 9 (jointly and separately, “the Asserted Patents.”). Targus is currently commercializing the
 10 asserted patents’ technology, and is concurrently enforcing the Asserted Patents.

11 The Asserted Patents disclose and claim, among other things, cases for displaying
 12 portable electronic devices (such as iPads) having a structure that permits rotating the
 13 portable electronic device held in the case between ‘landscape’ and portrait’ display
 14 positions. Defendant includes a ‘360 degree rotation feature in several of its product
 15 offerings to the consuming public. These activities infringe the Accused Patents.

16 Defendant has distributed and/or sold one or more Infringing Products to customers
 17 in this Judicial District. The basis for subject-matter jurisdiction is that this is a patent
 18 infringement action arising under Title 35 of the U.S. Code, and this Court has subject-
 19 matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

20 **Solo’s Position:**

21 Solo is a New York corporation that sells, among other things, mobile tablet cases.
 22 On August 3, 2015, Plaintiff Targus Group International, Inc. (“Targus”) filed a
 23 Complaint against Solo for alleged acts of infringement of U.S. Patent Nos. 8,746,449
 24 (the “449 patent”) and 8,783,458 (the “458 patent”) (collectively, “the asserted patents”)
 25 in the Central District of California [Dkt. No. 1]. Targus’s claims of infringement are
 26 based on the assertion that Solo has infringed the asserted patents “by developing,
 27 making, using, offering to sell, selling and/or importing...the Reflex Slim Case and other
 28 similar products” that allegedly infringe the asserted patents. Targus identifies one

1 mobile tablet case but fails to identify any other “similar products” that Targus contends
2 may infringe its patents.

3 Solo denies that the accused product infringes any valid claims of the asserted
4 patents. Solo also asserts that if any claim of the asserted patents were properly construed
5 so as to cover the accused product, then the claim would be invalid in view of extensive
6 prior art not considered by the U.S. Patent and Trademark Office. Accordingly, Solo has
7 asserted several affirmative defenses, and a counterclaim for invalidity of the asserted
8 patents. Solo contends that no damages may be assessed against it, and that it is entitled
9 to an award of attorneys’ fees, costs and expenses incurred in defending this action.

10 **B. LEGAL ISSUES**

11 **Targus’s Position:**

12 The key legal issues are: (1) whether Defendant infringes the Asserted Patents
13 literally or under the doctrine of equivalents (2) whether any such infringement was willful;
14 (3) whether Plaintiff is entitled to an injunction; (4) the amount of damages to which
15 Plaintiff is entitled; and (5) whether Defendant is entitled to a declaratory judgment for
16 invalidity.

17 **Solo’s Position:**

18 The key legal issues are whether the asserted patents are valid and enforceable under:
19 35 U.S.C. §102 for anticipation over the prior art, §103 as obvious over the prior art, § 112,
20 first paragraph and second paragraphs for lack of enablement and written description and
21 indefiniteness, and whether Targus committed inequitable conduct in procuring the asserted
22 patents. Other issues include (1) whether Solo infringes the asserted patents literally or
23 under the doctrine of equivalents; (2) whether any such infringement was willful; and (3)
24 whether Targus is entitled to an injunction or monetary damages as a result. Solo alleges
25 that Targus is barred from bringing the asserted claims by the equitable affirmative defenses
26 of estoppel, laches and waiver, as well as by 35 U.S.C. §§ 286-288. Solo also asserts that
27 the claims of the asserted patents are unenforceable due to patent misuse and Targus’s
28 unclean hands.

1 **C. DAMAGES**

2 **Targus's Position**

3 Targus's damages for patent infringement are a function of discovery to ascertain the
4 extent of Defendant's infringement and/or what lost profits are attributable to this
5 infringement or, alternatively, what a reasonable royalty rate would be for Defendant's
6 alleged infringement.

7 **Solo's Position**

8 Solo denies that the accused product infringes the asserted patents, and/or that any
9 alleged infringement was willful. Solo believes that no damages may be assessed against
10 it, and that it is entitled to an award of attorney fees, costs and expenses incurred in
11 defending this action.

12 **D. INSURANCE**

13 Targus is currently unaware of any applicable insurance policies.

14 Solo is not currently aware of any applicable insurance policies.

15 **E. MOTIONS**

16 At this time, Targus does not expect to file any motions to (i) add other parties or
17 claims, (ii) file amended pleadings, or (iii) transfer venue.

18 At this time, Solo does not expect to file any motions to (i) add other parties or
19 claims, or (iii) transfer venue, but may wish to (ii) file amended pleadings to assert
20 inequitable conduct, pending discovery on this issue.

21 **F. DISCOVERY AND EXPERTS**

22 Neither party envisions any needed changes to the Rule 26(a) disclosure
23 requirements of other Rules of Civil Procedure regarding discovery.

24 No written discovery has occurred yet. The parties will submit to the Court a
25 standard, two-tiered protective order to facilitate written discovery. This protective order
26 will include a "clawback" provision requiring the return of any privileged materials. The
27 parties are in the process of completing their Initial Disclosures and expect to do so by
28 November 24, 2015.

1 The parties anticipate taking discovery on the issues of patent infringement, patent
2 validity, willfulness, conception, reduction to practice, derivation, inequitable conduct, any
3 alleged lost profits, and the Georgia Pacific reasonable royalty factors, as well as any other
4 issues relevant to the claims of defenses in this matter.

5 Both Targus and Solo anticipate conducting 10 depositions, including a 30(b)(6)
6 deposition.

7 Solo proposes to bifurcate damages discovery such that damages discovery will be
8 stayed pending a ruling on Claim Construction.

9 Targus proposes opening expert witness disclosures be completed by September 19,
10 2016, rebuttal expert witness disclosures be completed by October 3, 2016, and expert
11 discovery be completed by October 31, 2016.

12 Solo proposes opening expert witness disclosures completed by March 13, 2017.
13 Rebuttal expert witness disclosures completed by March 27, 2017 and expert discovery
14 completed by April 21, 2017.

15 **G. DISPOSITIVE MOTIONS**

16 Plaintiff anticipates filing one or more motions seeking summary judgment on the
17 issues of patent infringement and validity.

18 At this time, Solo anticipates moving for summary judgment on the issues of
19 noninfringement and invalidity.

20 The parties are unable to anticipate the subject matter of motions in limine at this
21 time.

22 **H. SETTLEMENT AND SETTLEMENT MECHANISM**

23 The parties have engaged in preliminary settlement discussions. Both parties are
24 always willing to discuss the possibility of settlement as a means to dispute resolution.
25 Plaintiff proposes the use of outside ADR before a private mediator. Targus and Solo are
26 amenable to a mediation before a Magistrate Judge of the Central District. Targus proposes
27 an ADR completion date of November 10, 2016. Solo proposes an ADR completion date of
28 December 7, 2016.

1 **I. TRIAL ESTIMATE**

2 The parties estimate 5-7 days for trial. Targus requested a jury trial. Solo requests a
3 bench trial. The parties expect to call approximately 8 witnesses.

4 **J. TIMETABLE**

5 *See also* Section M below, and Exhibit A, attached.

7 **Targus's Proposed Timetable:**

8 Trial	January 24, 2017
9 Hearing on Summary Judgment Motions	December 5, 2016 (1:30 PM)
10 Close of Fact Discovery*	October 10, 2016
11 Deadline for Conducting Private Mediation	November 10, 2016
12 Deadline for Initial Disclosures	November 24, 2015

14 **Solo's Proposed Timetable:**

15 Trial	June 13, 2017
16 Hearing on Summary Judgment Motions	April 24, 2017 (1:30 PM)
17 Close of Fact Discovery	February 27, 2017
18 Deadline for Conducting Mediation	December 7, 2016
19 Deadline for Initial Disclosures	November 24, 2015

21 The parties propose that expert disclosures should be in accordance with Fed. Rule
22 Civ. P. 26(a)(2)(D), *i.e.*, such disclosures should be made at least 90 days before trial.

23 **K. OTHER ISSUES**

24 The parties anticipate no unusual litigation issues.

25 **L. CONFLICTS**

26 Solo has no parent corporation and no publicly held corporation owns 10% or more
27 of Solo's stock.

M. PATENT: MARKMAN HEARING AND CLAIM CONSTRUCTION DATES:

The parties propose the following schedule:

12/7/15 Initial Case Management Conference
12/21/15 Plaintiff's Disclosures under Rule 3-1
2/4/16 Defendant's Invalidity Contentions under Rule 3-3
2/18/16 Simultaneous Exchange of Claim Terms for Construction under Rule 4-1
3/10/16 Simultaneous Exchange of Preliminary Claim Constructions/Extrinsic Evidence under Rule 4-2
4/4/16 Joint Claim Construction and Prehearing Statement under Rule 4-3
5/4/16 Completion of Claim Construction Discovery under Rule 4-4
5/12/16 Concurrent Claim Construction Briefs due
6/2/16 Concurrent Reply Briefs due
6/16/16 Claim Construction Hearing under Rule 4-6

N. MAGISTRATE JUDGES

The parties do not consent to have a Magistrate Judge preside.

Dated: November 23, 2015

ONE LLP

By: /s/ Joanna Ardalan

Joanna Ardalan
*Attorneys for Plaintiff,
Targus Group International, Inc.*

Dated: November 23, 2015

SCULLY, SCOTT, MURPHY & PRESSER PC

By: /s/ Peter I. Bernstein

Peter I. Bernstein (Admitted *Pro Hac Vice*)
*Attorney for Defendant,
United States Luggage Company d/b/a Solo*